866.

SUPREME COURT OF THE UNITED STATES.

No. 67.

ANN LUPTON, *Appellant*,

vs.

PHINEAS JANNEY, *Executor of*

DAVID LUPTON.

APPEAL FROM CIRCUIT COURT U. S. FOR ALEXANDRIA, D. C.

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DISTRICT OF COLUMBIA, *Alexandria County,* } To wit:

Pleas before the honorable, the Judges of the United States Circuit Court of the District of Columbia, for the County of Alexandria, the first day of November, 1838.

TITLE.

ANN LUPTON, Complainant,
against
PHINEAS JANNEY, acting Executor of David Lupton, dec'd. } Defendant. } *In Chancery.*

Be it remembered, that heretofore, to wit: on the 5th day of November, 1831, the Complainant aforesaid, send out of the office of the Clerk of the said County, the United States writ of Subpœna against the said defendant, which is in the words and figures following, to wit:

SUBPŒNA.

DISTRICT OF COLUMBIA, TO WIT:

[L. S.] The United States of America, to the Marshal of the District of Columbia, Greeting:

You are hereby commanded to summon Phineas Janney, acting Executor of David Lupton, deceased, to appear before the Honorable Judges of the Circuit Court of the District of Columbia, for the County of Alexandria, at the Court House in the said county, in the town of Alexandria, at the next Court, to answer a Bill in Chancery exhibited against him by Ann Lupton, and this you shall in no wise omit, under the penalty of $333 33; and have then and there this writ. Witness the honorable William Cranch, Chief Judge of the said Court, this fifth day of November, 1831.

EDM. J. LEE, Clerk.

Marshal's Return—Executed on Phineas Janney.

C. SCOTT, D. M. for
HENRY ASHTON, Marshal.

BILL FILED, AND ORDER OF REFERENCES.

At another day, to wit: At a Court continued and held for the District and County aforesaid, the 4th day of June, 1833—until which time this case had been regularly continued at the rules—came the Complainant aforesaid by Thomas W. Hewit, Esqr. her Solicitor, and filed her Bill; and this cause by consent of parties, having been set for hearing, upon bill, answer and exhibits upon consideration whereof, the Court doth order, adjudge and decree, that Master Commissioner Auld, do take and state an account of the administration of Phineas Janney, upon the Estate of his testator; reserving however for further consideration the matters of Law stated in the Defendant's answer by way of defence, and report the same at this Court, with any matter he may deem pertinent, or either party may require.—Which Bill is as follows, to wit:

BILL.

To the Honorable the Judges of the Circuit Court of the District of Columbia, held for the County of Alexandria, in Chancery sitting.

Humbly complaining. Your oratrix, Ann Lupton, shews to your Honors, that she is the widow and devisee of David Lupton, deceased, who departed this life some time in the year 1814, having first duly made and published his last will and testament, by which last will and testament, he constitutes Phineas Janney, David Lupton and John McPherson his executors, all of whom qualified in the Orphan's Court of the County of Alexandria, where the will of the said David Lupton was regularly admitted to Record—a copy whereof is herewith exhibited, marked ; and prayed to be taken as a part of this bill.

Your oratrix further states that the said Executors gave separate bonds, and Phineas Janney above stated, acted in the administration of the assets, and disposed of the funds and real property of the deceased, the other Executors merely joining in the conveyance of the real estate desired to be sold.

Your oratrix further represents to the Court that the said Phineas Janney, on the 4th March, 1815, returned to the said Orphan's Court an Inventory and appraisement of the personal estate of the said Lupton—and that the said Janney as Executor of the said Lupton, rendered his first account of the assets of the said Lupton to the Orphan's Court aforesaid, on the 26th of October, 1816—at which time he also rendered an account of the sales of David Lupton's personal estate—copies of which papers are herewith exhibited, marked and numbered 1, 2 and 3, and prayed to be taken as a part of this bill. Your oratrix further states to the Court that the said Executor afterwards rendered two other accounts to the said Orphan's Court, the first dated the 16th day of April, 1818, and the last January the 5th, 1821, copies of which papers are likewise exhibited, marked 4 and 5 and prayed to be taken as a part of this bill.

Your oratrix further states to the Court that it appears by the exhibit before referred to, the mere ex-parte settlements of the said Executor that the estate of her said Husband was insolvent, and that the said Executor Janney is in advance for it: but your oratrix has been informed that if the said accounts of the said Executor had been settled upon proper principles, and he had been charged as in Law or Equity he ought to be, with various sums, which it was his duty and was in his power to collect, the Estate would not only have been abundantly sufficient to discharge all its obligations, but a very handsome residuum would have remained to your oratrix as devised; and this will be manifest when your oratrix shews to your Honors that so incorrectly have the accounts been stated, that the commissions to the said Executor have been swelled thirty five dollars and twenty eight cents by mere cross entries.

Your oratrix charges and avers that the said Executor debits the estate of her late husband with the sum of four thousand, nine hundred and fifty nine dollars and forty three cents, as paid to one Peter Saunders, without any sufficient or legal evidence that the money was in fact due: the periods at which the several sums of money are charged, which make up the above total, will appear by the first and second accounts filed by the said Executor. copies of which are exhibited with this bill.

Your oratrix further charges, that while the said Executor was paying to the said Peter Saunders (as his accounts purport) the aforesaid large sums of money, he omitted to collect of John McPherson & Son, four thou-

sand and eighty three dollars and fifty cents, upon their note endorsed by the said Peter Saunders;—this fact appears as your oratrix thinks from the exhibits filed herewith, and the explanatory papers rendered to her by the said Executor. And if the endorsement of the said McPherson & Son's paper, was not made by the said Saunders, it is manifest that the said Janney took no security for the large debt of four thousand and eighty-three dollars and fifty cents, created by purchases at the sale of the said Lupton's effects, made by the said Jno. McPherson & Son—and so far that negligence the said Executor has rendered himself chargeable with the said debt.

Your oratrix charges, also, that the said Executor has not credited the estate of his testator by the sum of two hundred and sixty-three dollars and fifty cents, due by a note given to A. Janney & Co. by John M'Pherson & Son, and by them assigned to the said Executor, which said note was dated Nov. 11, 1816. Your oratrix charges also, that the estate has received no credit for the plaister mentioned in the Inventory amounting as your oratrix has been informed, to eleven and a quarter tons, and of the value of two hundred and twenty-five dollars. She also charges that the said John Mc Pherson and Son owed the testator of the said Executor by open account, one hundred and forty dollars, for which the estate as yet has received no credit—nor has the note of one *one* Thomas Neill, for two hundred and twenty-three dollars, given to Abijah Janney & Co., and by them transferred to the said executor, been in any shape credited to the estate of his testator.

Your oratrix further states, that it may be that many other debts due the estate of her late husband, have been lost by negligence, or, not properly credited, as the said executor has returned to the Orphan's Court no list of debts, either sperate and desperate.

In tender consideration whereof, and for as much as your oratrix is remidiless at Common Law, and can only be relieved in a Court of Equity, where matters of this kind are properly cognizible, she prays that the said Phineas Janney, executor of the said David Lupton, deceased, may be made a deft.: hereto, with apt words to charge him; and that he may be compelled to answer the same, upon his corporal oath, as fully, and as particularly as if each fact herein stated, or charged, were made the subject of a special interrogation; and that he may render with his answer a true and perfect list of all debts due the said David Lupton, at the time of his death And your oratrix further prays, that the administration accounts of the said executor, may all be opened; and that the Court would order a new and full account to be taken; and for such other and further decree as shall be deemed meet and equitable. May it please the Court to grant to your oratrix, the U. States most gracious writ of subpœna, &c.

T. W. HEWITT,

Solicitor for Complainant.

And at another day, to wit: At a Court continued and held for the said District and County, the 16th day of November, 1833, this cause was continued.

ANSWER FILED AND GEN. REP. AND ISSUE.

And at another day, to wit: At a Court continued and held for the District and County, aforesaid, the 30th day of May, 1834, came the Complainant, aforesaid, by her solicitor; and the defendant by R. J. Taylor, Esq. his Solicitor, filed his answer; to which the Complainant replies generally

and issue. And general commissions, are awarded to take depositions, and cause continued, which answer is in these words—to wit:

ANSWER.

The answer of Phineas Janney, one of the Executors of David Lupton, Jr., deceased, to the Bill of Complaint, exhibited against him on the Chancery side of the Hon. Circuit Court of the District of Columbia, at Alexandria, by Ann Lupton.

This Respondent, saving to himself the benefit of exception to the Jurisdiction of the Court, on the matter stated on the Complainant's Bill, and the many errors, untruths, and imperfections in the said Bill contained, in answer to so much thereof as he is advised is material for him to answer to, he answers and says. That he admits that David Lupton, Jr., (husband of the complainant) departed this life, in the year 1814, having duly made and published his last will and testament, whereof this respondent believes a true copy is exhibited with the Complainant's Bill.

That the said David Lupton, Jr., constituted the Complainant Executrix, and his father, David Lupton, the complainant's father, John McPherson; and this respondent, executors of said will. That the said David Lupton, John McPherson, and this respondent, took on themselves the burden of the execution of the said will, and obtained letters testamentary thereon from the Orphan s Court of the County of Alexandria.

This respondent admits that he returned to the said Orphan's Court an inventory of the personal estate of the said David Lupton, Jr., with an account of the sales thereof, and that he rendered and settled with the said court three accounts of his administration of the estate; copies of which this respondent believes to be exhibited with this Complainant's Bill.

This respondent admits that the complainant was not present at, nor summoned to attend the said settlements. But he is advised and avers that the said settlements were legally made before a court, having full jurisdiction in the matter, in the due and regular exercise of its jurisdiction; and this respondent relies on the said settlements in bar of the jurisdiction of this Court, as a Court of original jurisdiction in the case stated by the complainant, in the same manner as if the same were specially pleaded.

This respondent not waving the defence before made, but relying on the same as if specially pleaded, in answer to the said bill, says: That the charge. that "the commissions of this respondent have been swelled by cross entries to the amount of thirty-five dollars and seventy-eight cents," refers, as he supposes, to an allowance of commission in his second settlement, (complainant's exhibit No. 4,) on the charges and credits of $64, for half of a hack, sold by Peter Saunders to Evan P. Taylor, and $406 $\frac{50}{00}$ for sundry goods, taken by the complainant, at appraisement.

That in respect of the first of these items, this respondent had in his account sales returned the said testator's interest in said hack, as sold to Peter Saunders, who owned the other moiety, for sixty-four dollars, and by so doing had made himself chargeable with that sum; that on settlement with said Saunders, in consequence of repairs on said hack, paid for by him, the said Saunders was found liable for only $52, for which sum this respondent had credit allowed him in the settlement of the said Saunder's account as a creditor of the estate of the said David Lupton, Jr. This respondent is advised by his counsel, that he is entitled to commission, if not on the sum of $64, at least on the sum of $52. That the entry, how-

ever, was not introduced into the account for the sake of the commission, but, to prevent a charge being made through want of information of the same matter from the account of sales.

That in respect of the commission on the said sum of $406 50, this respondent admits that he has not been in form, charged with that sum on the accounts, of which the complainant has exhibited copies; but he avers, that he was practically, and in effect, charged with the same, and has accounted for it to the creditors of the estate; and that being included in his inventory, he is entitled, as he is advised by his counsel, to commission on the sum.

That before this respondent's third settlement (complainant's exhibit No. 5) headed "Third account" was made, the Bank of Alexandria had recovered judgment on the Common Law side of your Hon. Court, against this respondent as executor of the said David Lupton, Jr., for the sum of $2500, and $9.98 to be discharged by the payment of such dividend of the said debt as it should appear by settlement with the said Orphan's Court, the said Bank was entitled to receive out of the assets of the estate of the said David Lupton, Jun'r. on which judgment execution was issued, of which a copy is exhibited herewith, as a part of the answer. Marked A.

That to ascertain the amount of the said dividend, the Register of the Orphan's Court made a statement of the assets of the said estate, which had come to the hands of this respondent, a copy of which is herewith exhibited, marked B. that in the said statement this respondent was charged with all the assets of the estate which had come to his hands, including the said $406.50, as will appear by a comparison of the said statement with the accounts of which the complainant has exhibited copies.

That the said final account (Complainant's exhibit No. 5) was predicated on the said statement, and that although this respondent was in fact held accountable to the Bank of Alexandria for the said sum of 406.50, it was by mistake omitted to be credited to the estate in the said "final account." That under these circumstances this respondent is advised by his Counsel he is entitled to commission on the said sum of $406.50, and that the complainant has never paid or otherwise accounted to him for the said goods, and is now chargeable with them.

That there is yet a considerable balance due to the Bank of Alexandria on their said judgment.

This respondent, further answering, says that the said Peter Saunders was a fair and bona fide creditor of the said David Lupton, Jr's. estate, to the full amount of all payments made to him by this respondent as charged in his said accounts, over and above the credits allowed by him to this respondent for the said sum of $52, and for John McPherson & Sons' note of $1000, endorsed by him, and deducted by this respondent in settlement with him as is hereafter stated, and over and above all other credits allowed by him to this respondent as shewn by this respondent's accounts.

This respondent denies that the said Peter Saunders was over responsible as endorser, or otherwise, for any debt due to the estate of this respondent's intestate from the said John McPherson & Son, except as endorser of one note for $1000—for so much of the money due by them for flour as hereinafter stated: which note was deducted by this respondent in settlement with the said Saunders, of the amount due to him from the estate of the said David Lupton, Jun'r.

This respondent admits that no security was taken on the sale of the flour of the estate to the said John McPherson & Son —But he denies that he is chargeable with any negligence or misconduct on that account.

That the said firm of John McPherson & Son, was composed of John McPherson, the Complainant's father, and one of the executors of her husband's estate, and of Daniel McPherson her brother. The complainant had given to the executors of her deceased husband, a written authority to sell his real and personal estate, either at public auction or private sale, as the said executors might deem most advantageous—a copy of which is annexed to the complainants exhibit No. 3.—That when the said flour was sold to the said John McPherson & Son, they were in good credit, and engaged in extensive business in the town of Alexandria, and would readily and generally have obtained credit to that amount. That after the said sale, this respondent credited them on his own account without security, so favorable was his opinion of their solvency. That the said flour was in store at the time of the death of the said David Lupton, Jun. and that this respondent agreed with the said firm for the price at which it was to be sold, and the credit to be allowed, as is stated in the account sales returned by this respondent.

That the flour was taken possession of by the firm, without further consultation with this respondent, or agency on his part: he was not ever called on to deliver it, but it was taken possession of by the said firm under the said contract of sale—that, except the agency of this respondent in effecting the said sale, he was not more in possession of said flour, or chargeable with it, than the other executors, and this respondent is advised that on every principle of equity, it is more properly chargeable on the said John McPherson and his sureties as executor, than on this respondent. That the said John McPherson & Son failed in trade on or about the day of , 1816.

That the said sale of flour was made on or about the 17th day of April, 1815, on a credit of 6 mos. that on or about the day of May, 1816, this respondent succeeded in obtaining the note of the said J. McPherson & Son, for the sum of $1000. on account of the said sale with the said Peter Saunders as endorser, but they always refused to give their notes for any further amount, contending that the estate of the said David Lupton, Jun. was indebted to them in amount equal, or nearly so, to the balance due for the said flour.

That in settlement of the said Peter Saunders' account against the estate of this respondent's testator, the said Peter Saunders was charged with the said note of $1000, with interest thereon, and the testator's estate had credit for it.

That the estate of this respondent's testator was not entitled to credit with this respondent for the notes of said John McPherson & Son for $263 50; and Thomas Neill for $223.—That the said notes were taken by Peter Saunders, one of the firm of Abijah Janney & Co. (which had been composed of Abijah Janney, the said Peter Saunders, and the said David Lupton, Jr.) for one third of the debts due to the said firm by the said John McPherson & Son, and Thomas Neill, and were not delivered by the said Peter Saunders to this respondent until March, 1817, as the said David Lupton, Jr's. share of the debts. That the said John McPherson & Son and Thomas Neill, were insolvent when the said notes were taken, and this respondent did not think himself warranted in incurring expenses of suits on them. That this respondent is under the impression, but is not certain, that the note of the said Thomas Neill was sent to David Lupton, his co-executor, into whose neighbourhood the said Neill had removed from Alexandria.

That this respondent has fully accounted for all the plaister belonging to

his testator's estate, which came to his hands. The account of sales shews 35¼ tons, and this respondent knows of no more.—But since this respondent rendered his last account headed "final account," the said John McPherson, Daniel McPherson and Peter Saunders, have departed this life, by which means this respondent has been deprived of the benefit of their testimony, which it is apparent is of the highest importance in relation to many of the charges preferred by the complainant against this respondent.

That the respondent did return to the Orphans' Court a list of debts due to the estate of his testator, of which a copy is exhibited, marked C. That the debt of $140, therein stated as due from John Mc Pherson & Son, would only be allowed by them as a discount against their debt, against the estate as stated in said return; and this respondent had no evidence of the same, except the qualified admission of the said John Mc Pherson & Son, as before stated, and the entries on his testator's books. That the debt of $80 90 was denied by the said Samuel Mc Pherson, and was said to be due from John Mc Pherson & Son; and this respondent was in the same situation as to this debt, as he was in respect to the said debt of $140. That Abijah Janney, who was stated to be a debtor, was insolvent, and that the sum of $687 49, credited as paid, was only raised by means of this respondent's endorsement for the said Abijah, and that this respondent has actually lost the same.

This respondent denies all fraud and concealment, and prays to be hence dismissed, with costs, &c.

R. J. TAYLOR, *Solicitor for Defendant.*

ALEXANDRIA COUNTY, SE.

This day, Phineas Janney, one of the Society called Friends, and conscientiously scrupulous of taking an oath, made solemn affirmation, before me, a Justice of the Peace of the County aforesaid, that the matters in the foregoing answer stated as of his own knowledge, are true, and all others he believes to be true.

Given under my hand, this 3d day of August, 1833.

ADAM LYNN.

RULE, NEW COUNSEL---AND RULE SECURITY FOR COSTS.

At another day, to wit: at a court continued and held for the said district and county, the 16th day of October, 1834, came the defendant by his solicitor, and on his motion a day is thereupon given the complainant until the next court, to employ new counsel; and it appearing to the satisfaction of the court, that the complainant is not an inhabitant of the District of Columbia, on the motion of the defendant, by her attorney, it is ordered that this suit be dismissed at the next term, unless security for such costs and damages as may be awarded the defendant, and also of the fees which will become due from the complainant to the officers of this court, be given, with the clerk, within sixty days from this time.

T. F. MASON, SECURITY FOR COSTS.

And at another day to wit: At a court continued and held for the district and county aforesaid, the 10th day of June, 1835, came the complainant aforesaid, by Thomson F. Mason, Esq., her solicitor; and the said Thomson F. Mason comes into court and undertakes for the plaintiff, that she will satisfy and pay all such costs and damages as may be awarded to

the defendant, in case the plaintiff shall be cast in the suit, and also that she, the said plaintiff, shall satisfy, and pay all the fees which shall become due from her, to the officers of this court: or, that he, the said Thomson F. Mason, will satisfy and pay those costs, damages, and fees for her; and the cause is continued.

At another day to wit: At a court, continued and held for the district and county afordsaid, the 27th day of October, 1835, came the parties aforesaid, by their attorneys, and this cause is continued

And at a court, continued and held for the said district and county, the tenth day of October, 1836, came the parties aforesaid, by their solicitor, and on motion of the complainant, leave is given her to amend her bill;—and the order of reference of accounts made in this case *made* is set aside, and this cause is returned to the rules, with leave to the defendant to file his supplemental answer to such amended Bill.

At another day, to wit: At the rules held in the Clerk's office of said county for the month of March, 1837, (until which time this cause had been regularly continued,) came the complainant aforesaid by Thomson F. Mason, Esqr. her solicitor, and filed her amended bill, which is as follows, to wit:

AMENDED ANSWER.

ANN LUPTON
vs.
DAVID LUPTON'S EXOR. } *In Chancery.*

Your oratrix, Ann Lupton, by leave of the Court for this end first obtained, further shews unto your Honors by way of amendment to her original bill in this Court, filed against Phineas Janney, acting Executor of said David Lupton, deceased.

That, since the filing of the said original bill, she has been informed and now charges, that the said Phineas Janney on the day of 1815, presented a copy of the last will and testament of the said David Lupton, deceased, to the County Court of Fairfax, in the State of Virginia, where the same was duly recorded.—That bond and security having been given by him to the satisfaction of the Court, he took upon himself alone the burden of the execution of said will, within the said state of Virginia, and subsequently proceeded to sell the estate of said decedent, within the said State of Virginia, and for which, she is informed and believes, he received between eight and nine thousand dollars. No inventory or appraisement on account of said estate, so disposed of, has ever been made to, or settled with the County Court of Fairfax, nor, so far as she is informed and believes, in any other court having any competent authority to settle the same, nor was she ever present at, or received any notice whatever of any such settlement. Nor does she know precisely for how much said estate sold, nor how much thereof consisted in real, and how much in personal estate.

BILL TAKEN FOR CONFESSED.

At another day, to wit: At the Rules held in the Clerk's office, for the month of Sept. 1837, came the complainant aforesaid by her solicitor, and on her motion the complainant's bill is taken for confessed, and set for decree.

ORDER TAKING BILL FOR CONFESSED SET ASIDE.

And at a Court continued and held for the district and county aforesaid, the 10th day of October, 1837, came the parties aforesaid by their solicitors, and the defendant filed his amended answer, and on his motion the order taking the complainants bill for confessed is set aside, and the complainant replies generally to said amended answer, and this cause is continued which answer is as follows.

The answer of Phineas Janney to the amended bill by Ann Lupton, against him before the Circuit Court of the District of Columbia, at Alexandria.

AMENDED ANSWER.

This respondent saving to himself the benefit of exception to the many errors in the said bill contained, in answer to so much thereof as he is advised is material, he answers and says—

That he admits that letters of administration on the estate of David Lupton, deceased, in the State of Virginia, were granted to him by the County Court of Fairfax County, in that State. He avers that he has long since rendered an account of his administration of the Virginia assets to that Court which has been received and confirmed by the Court, and been ord r-ed to be recorded. That the settlement made by him in the Orphans Court of Alexandria, do however embrace the Virginia assets and present a full statement of both administrations. He is ready to produce, and will produce when required, an Office copy of his settlement with the said County Court of Fairfax.

This Respondent is advised that an act of the General Assembly of the State of Virginia, passed the 8th day of March, 1826, entitled "An act for the limitation of actions against persons acting in a fiduciary character and their sureties, and other purposes," is a complete *bar* to any proceedings against him, in that State, and was so when the said amended Bill was filed.

And if it cannot be pleaded as an absolute Bar to the re-examination of his accounts before this Honorable Court, this Respondent is nevertheless advised, that the lapse of time intervened between his settlement of account in Alexandria and in Fairfax, and the institution of this suit, afford a sufficient ground for your Honors refusing to open an account so long since settled by the competent authorities—and this respondent relies accordingly on such lapse of time in bar of any decree for opening his said settlement. This Respondent further, in answer to the Complainants original and amended bill, says: That since the original bill was filed, and since this respondent filed his answer thereto, circumstances before unknown to him, have come to his knowledge, which induced him to believe that the said John McPherson & Son, in the proceedings named, were entitled to the credit by them claimed against their purchase from the respondent, of the flour in the proceedings mentioned for the note of the said David Lupton, by them endorsed. That in the schedule of debts due to the estate of the said David Lupton, returned to the Orphans Court by this respondent, on the 16th Nov. 1820, respondents Exhibit C. and in a letter from this respondent to the Complainant—Compt's. Exhibit A. this respondent has stated his reasons for believing the said note to have been lent by the said Lupton to John McPherson & Son, that this respondent had not there seen or examined the said note.—That on the said David Lupton's Bill Book, this respondent

found two notes entered as issued to the said Samuel McPherson & Son, corresponding in amount with that for which the said McPherson and Son claims a credit, that is $1600; that they were both entered as lent—the former entry being in the hand writing of the said Lupton, the latter (being the one claimed) by one Peter Saunders. That this respondent has not adverted to the circumstance that the latter entry was made in the hand writing of Saunders, nor to the fact, that the note from its date, must have been issued, when the said Lupton was confined by his last illness, it bears date on the 12th day of 11th month, 1814, and is the last entry on the Bill Book, the said Lupton having died only a few days afterwards, that the said Bill Book and the note claimed, are now exhibited—the said note showing on its face that it was made and endorsed for the said Lupton's own use—and on pursuing the inquiry, this respondent finds that it was actually discounted at the Bank of Potomac for the use of the said David Lupton, and the net procceds carried to his credit on the Books of that Bank—that this Respondent has been informed, and believes that the payment of the said note was effected with difficulty, by the Attorney of the Bank of Potomac, in Jefferson County, in the State of Virginia, through Daniel Mc Pherson, nephew of the said John, (not one of the firm of John Mc Pherson & Son,) partly from the sale of land made by the said John Mc Pherson to him, and partly from the said Daniel's own money.

R. J. TAYLOR, *Solicitor for Defendant.*

PHINEAS JANNEY.

Affirmed to before me,

CHARLES SCOTT, *Justice of the Peace.*

SET FOR HEARING, AND BILL DISMISSED.

And at a Court, continued and held for the District and County aforesaid, the fourth day of June, 1838, came the parties aforesaid, by their Solicitors, and this cause is continued.

And now here, at this day, to wit: At a Court continued and held for the District and County aforesaid, the first day of November, 1838, came the parties aforesaid, by their Solicitors, and this cause is now set for hearing on the Bill, Answer Replications, Exhibits and depositions, and now coming on to be heared, by consent of parties, on consideration whereof the Court doth order and decree that the Complainant's bill be dismissed, with costs.

APPEAL.

From which decree the complainant appeals to the Supreme Court of the United States, which is granted her, upon her giving Bond, with security in the sum of two hundred dollars, to be approved by this Court, as one of the Judges thereof. Complainant's Costs, $. Defendant's Costs, $

Exhibits referred to in Complainant's Bill. Will of David Lupton, Jr.

D. LUPTON, JR'S. WILL.

I, David Lupton, Jr., of the town of Alexandria and District of Columbia, being weak in body, but of sound disposing mind and memory, do

make this my last will and testament, hereby cancelling and revoking all others by me heretofore made.

First. I will, order and direct, that all my real estate of which I may be possessed at the time of my decease, both in the District of Columbia and in the State of Virginia, or elsewhere, shall be sold, together with my personal estate, including household goods and furniture of what kind soever, and the proceeds thereof, so far as may be necessary to be applied to the discharge of my just debts, as well in my own name as in the name of Abijah Janney & Co., in which I am one-third concerned.

Item—I give, devise, and bequeath unto my beloved wife Nancy, whatever sum may remain after the discharge of all my just debts, as before mentioned, depending upon my father, David Lupton, to provide for my dear children, in consequence of my never having received a title from him for the land whereon I first settled, in Frederick county, adjoining his house place.

Lastly. I constitute and appoint my beloved wife Nancy executrix, and my father, David Lupton, my father-in-law, John McPherson, and my brother-in-law, Phineas Janney, executors of this my last will and testament; and I do authorize and empower them, or such, or so many of them as shall take letters testamentary, and the survivors or survivor of them, to make all such deeds, conveyances, and assurances, in the law, as shall be necessary to convey to the purchasers or the purchaser, of all and every part of my real estate, a good and perfect estate of inheritance in fee simple, of and in the law.

Witness my hand and seal, this twenty-fourth day of the eleventh month, called November, in the year of our Lord one thousand eight hundred and fourteen. (1814.)

his
DAVID ⋈ LUPTON, Jun. (SEAL.)
mark.

Published and declared by David Lupton, jun., as his last will and testament, in our presence, who, in his presence, have hereto set our names in attestation thereof.

ELISHA C. DICK, MORDECAI MILLER,
THOMAS NEILL, DANIEL M'PHERSON.

At a session of the Orphans' Court of the County of Alexandria, in the District of Columbia, the second day of December, 1814, this last will and testament of David Lupton, jun., was presented to the court by David Lupton, John M'Pherson, and Phineas Janney, the executors therein named, and proved in due form of law, by Elisha C. Dick, Mordecai Miller, Thomas Neill, and Daniel M'Pherson, witnesses thereto, and ordered to be recorded.

And the said executors having qualified to the said will, and given bond of security according to law, letters testamentary were granted them.

(Teste.) A. MOORE,
Register of Wills.

A copy—teste. A. MOORE,
Register of Wills.

FIRST ACCOUNT OF DAVID LUPTON, JUN'S ESTATE, RENDERED 26TH OCTOBER, 1816.

Dr. *The Estate of David Lupton, Jr. deceased, in acct. with Phineas Janney, Executor*

1815.				
2 mo. 25.	To cash paid	Snowden and Simms, for advertising order of Orphans' Court,	$	12 50
27	"	Course & Ronnsaville, do.		12 50
"	"	Taxes to corporation for 1814,		17 45
5 m. 2	"	John McKinney, for three qrs. rent,		150
6 m. 9	"	do. for one do.		50
7 m. 7	"	Bernard Bryan, for 1 y'rs rent of dwelling,		200
12 m. 18	"	Jno. Mins, admix.		25
1816. 4m. 26	"	J. C. & R. Withers,		24
	"	Register of Wills,		16 68
	"	Reed & Bowie, their account,		34 82
	"	Thos. Jacobs, balance of his account,		24 15
	"	Thos. Shields, his bill,		8 50
	"	Andrew Jamieson, his account,		1 00
	"	Harris and Piles, their account,		21 71
	"	Thomas Shreve, his account,		20 50
	"	Henry S. Earl, do.		13 12
	"	H. B. Deagan, do.		4 48
	"	C. F. Peyton, do.		48 02
	"	Jno. Throop, do.		2 54
	"	Geo. S. Hough, do.		82 61
	"	Field & Rock, do.		1 42
	"	Mahlon Scholfield, do.		10 17
	"	Thomas Steel, balance of his account,		1 50
	"	James Shubey's estate, his account,		9 25
	"	Lewis Hopkins', do.		32 40
	"	Jno. H. Crease, do.		23 15
	"	Thompson Simpson, do.		10 01
	"	James Anderson, do.		11 09
10m. 19	"	Peter Saunders, on acct money due him from the estate,		900
	"	Bank Potomac, for D. Lupton's note, int. and protest,		1110 37
" 26	"	Register of Wills,		12 67
	To 5 per cent. commission on $3,868 57 received,			193 43
	To 2½ do. do. on 2,842 61 paid,			71 07
	To balance due the estate,			761 46
			$	3868 57

Returned, October 26, 1816, and ordered to be recorded.
(Teste.) A. MOORE, *Register of Wills.*

A copy. (Teste.) A. MOORE, *Register of Wills.*

The Estate of David Lupton, Jr., deceased, in acct. with Phineas Janney, Executor. Cr.

1815.					
1 mo. 21	By cash to Jane Munroe, in full of her acct.			$ 1	50
" 25	" John Harper,			3	
	" Joseph Heston,			9	
2 m. 8	" J. & G. Plummer,				75
3 m. 3	" John Wise,			1	67
	" M. D. Reardon, $6 75; Nimrod Farrow, $50			56	75
	" Thos Reed. $4 50; Carlisle Whiting, $4 50			9	00
	" Wm. H. Harriss,			1	83
	" Daniel Wright, balance on his acct.			1	00
	" John McKinney, do.			1	10
	" Jacob Grim, bal. his acct,	$3 32			
	do. storage & inspect'n of flour,	83			
				4	15
	" Joseph Sample, am't of his acct,	$23 49			
	do. storage and inspect'n of flour,	10 38			
				33	87
5 m. 3	" Jno. Hamilton, am't of his acct,	$57 27			
	do. storage and inspect'n of flour,	17 91			
				75	18
15	" Israel Janney, his acct,	$175 25			
	do. storage and inspect'n of flour,	122 70			
				297	95
	" Robert Bond, his acct,	$2 56			
	do. difference in flour and storage and inspection on same,	17 84			
				20	40
	" Isaac Steer, his acct,	$2 27			
	do. storage and inspect'n of flour,	4 63			
				6	90
6 m. 15	" Daniel Janney, his acct,	$2 40			
	do. storage and inspect'n of flour,	12 92			
				15	32
8 m. 1	" Abijah Janney, insp. his acct.	$12 94			
	do. storage and inspect'n of flour,	8 10			
				21	04
	" Janney & Eaches, their acct,	$1 41			
	do. storage and inspect'n of flour,	1 87			
				3	28
	" Daniel Harris, am't his acct,	50			
	do. storage and inspect'n of flour,	4 59			
				5	09
	" John Janney's 3d storage and inspection of flour,			1	00
	" R. W. Hamilton, on acct. storage,			22	50
1816. 3m. 15	" Mary Follin, her acct,			33	05
" 6 m. 10	" Stephen Baird,			19	55
	" James Luke, balance of note,	$149 83			
	do. interest on do.	14 79		164	62
"10 m. 19	" Abijah Janney, his book acct, in full,			178	99
	do. on acct. his note,			687	49
	By gross amount sales of personal property, excepting bank stock, (not sold) as per acct. rendered Orphans' Court, 10th m. 8th,	$6,851 59			
	From which deduct the amount of goods taken by the widow, at the appraisement as entered on the acct. sales,	$406 50			
	Sale to John McPherson & Son, uncol'd,	4083 50			
	do. Isaac Lupton, $105; P. Saunders for hack, $64	169			
		4,659 00			
				2192	59
	Gross sum received,	$2192 59		$3868	87

E. E. Alexandria, 10 mo. 23d, 1816.

PHINEAS JANNEY,
Executor of D. Lupton, jun. deceased.

SECOND ACCOUNT.

Dr. *The Estate of David Lupton, Jun., deceased.*

1816.			
11 m. 2	To cash paid Bank Potomac, balance due them, per his bank book, and their acct,	$ 27	13
12 m. 19	To do. paid Peter Saunders per his order, on acct. money due him from estate,	51	
28	do. do. do.	257	51
	" do. per entry on his acct. settled,	15	75
1817..3 m.1	" my acceptance of Peter Saunders' draft in favor of Bank Alexandria (pd) on acct of money due said Saunders from estate,	1,300	
	" paid P. Saunders in settlement of J. McPherson & Son's note on which he was endorser; prin. $1000; int. $43 0	1,043	20
	" paid Peter Saunders this day, in full, by my order on Laurason and Fowle,	1,327	97
	" paid R. M. Scott, for D. Lupton's note, (1st inst.) for money due on wharf, property secured by deed of trust; principal and interest,	2447	50
5 m. 28	" paid Bank of Alexandria, for balance of acct. due them, $30 01		
	" " for int. pr. their statement for money overdrawn. 34 50		
	" " D. Lupton's note, due Dec. 20, 1814, for $3000		
	" " protest, $1 70; int. on note $439 24, 440 94		
	$3,440 94		
	" " D. Lupton's note, due Jan. 17, 1815, for $3,000		
	" " protest, $1 70; int. on note, $423 73, 427 43		
	$3,427 43		
	" " D. Lupton's note, due Jan. 24, 1815, for $5,000		
	" " protest $1 70; int. on note, $703 56, 705 26		
	$7,505 26		
		12,638	14
	" error of $64, entered on the acct. sales rendered for half a hack sold to Peter Saunders, or by him sold to Evan P. Taylor; the same having been sold for only $52, and that sum accounted for by P. Saunders in acct. with the executors of D. L.	64	00
	" Nancy Lupton, (widow of D. L. Jun.) per her receipt for sundry goods taken by her at appraisement, amounting to,	406	50
1818..3m.16	" paid expenses for collecting a note of $1,600, lent by D. L., Jun., to Jno. McPherson & Son, and discounted at Bank of Potomac, for use of J. M. & Son. For said note, a suit was brought by the bank against the endorsers, and recovered by them, and by agreement with the bank, the expense was to be paid by the executors,	92	50
	" paid at Mechanics' Bank 7th call on 10 shares of stock, being 50 c. per share,	5	00
4 m. 14	" paid at Union Bank, instalment on 24 shares new stock, as " per acct. on the back of the certificate,	35	00
16	" " Mechanics' Bank, balance due them as per acct. and receipt,	16	97
	" " Register of Wills,	16	86
	" " 5 per cent. commission on $20,840 98, received,	1,042	05
	" " 2½ per cent. commission on $19,745 03, paid,	493	63
	" " balance due the estate, including bank stock, credited in this account,	321	73
		$ 21,602	44

In account with Phineas Janney, Executor, Cr.

1816.			
10 m. 26	By bal. per act. rendered and settled with the Orphans' Court,	$ 761	46
12 m. 28	" Cash of Susan Drow, in full of her acct.,	3	34
" "	" " Samuel Mead, do.	7	00
1817.	" " John Ross, do.	1	12
3 m. 1	" rec'd of Laurason & Fowle, for D. Lupton's half of wharf and warehouse, at lower end of Prince street, sold them as per deed of conveyance made them by the Ex'rs of D. Lupton, Jr.	10,000	00
" 11	" rec'd for John McPherson & Son's note on acct. of flour sold them, per acct. sales rendered and noted in my last acct. endorsed, as not received, note, $1,000		
	Interest for 249 days on the above, 41 50	1041	50
5 m. 28	Rec'd for D. L's ¼ Philadelphia mill, and property attached thereto, which was sold but not conveyed to Albin G. Smith, 7 m. 1st, 1815, for $7500, of whom I received as follows, viz. On the 23d of the 5 m., 1816, $550, and on the 18th of the 7 mo., 1816, $1875, making $2,425 00		
	And by the consent of the said A. G. Smith, and in consequence of his failing to make the remaining payments, I resold the said 1-3 of the mill, to M. Miller for $6500, on the 12th day of the 8 mo., 1816, of which sum I rec'd $5834 69, being the balance due from said Smith, and interest thereon from M. Miller, up to the date of this entry, (the balance was paid by M. Miller to A. G. Smith,) $5,834 69	8259	69
8 m. 23	Rec'd of R. W. Hamilton in full of balance of his account, and storage acct. with interest,	99	33
	Rec'd of Isaac Lupton $105—this sum was entered as not received in my last acct.	105	00
	" of Mary Lupton, $406 50—entered in my last acct. same as above,	406	50
1818.			
9 m. 4	Rec'd of M. Miller for scale-beam and fixtures, sold since acct. sales rendered,	15	00
4 m. 14	" of Jon. Janney, for four 56 and one 28 weights,	9	00
	Am't of entry for half hack, entered at foot of my last acct. rendered as not being rec'd from P. Saunders, (now settled. See debit side,)	64	00
	Rec'd at bank of Alexandria 7 dividends on 1 share of stock up to 1 m. (January) last inclusive,	56	00
	Rec'd from Joseph Smith, for 3 shares of Union Bank stock, sold to him at $6 each, to enable the bank to issue new scrip agreeable to their charter for shares exclusive of the road stock, which remains in bank, subject to the decision of the Circuit Court,	18	00

In account with Phineas Janney, Executor. Cr.

1818 4 m. 14	Rec'd at Union Bank for dividends 1 *a* 7 inclusive,		$ 85	50
"	" at Mechanic's Bank, dividend from Sept. 1814 to March 1818, inclusive.		23	
	The stock remains on the books of the respective banks in the name of D. Lupton, jr.			
	1 share Alexandria Bank stock, appraised at	$200		
	Union Bank stock, originally 63 shares, appraised at	$365		
	From which deduct sold as above, and credited in acct	18		
	Leaving the sum of	$347		
	The above mentioned balance of 60 shares has by the creating of new stock agreeably to charter, been converted into 24 shares of larger amount; on which I have paid instalment as per debit of	35		
			382	
	The above sum of $382 includes 1 1-4 shares road stock, remaining in the Union Bank; 10 shares of Mechanics' bank stock, not appraised; not being known of it till some months after the appraisement, when I found the certificate; these at par were $60, to which add the instalment paid as per debit $5		65	00
			$21,602	44
" 16	By balance due the estate including bank stock,		$321	73

E. E. Alexandria, 4 mo. 16th, 1818.

PHINEAS JANNEY, *Acting Executor.*

Received, April 16, 1818, and ordered to be recorded.

A. MOORE, *Register of Wills.*

A Copy. Teste.

A. MOORE. *Register of Wills.*

FINAL ACCOUNT OF DAVID LUPTON, JUN.'S ESTATE, RENDERED JANUARY 5TH, 1821.

The Estate of David Lupton, Jun., deceased, in acct. with Phineas Janney. Acting Executor.

DR.

1818.					
7 mo. 11	To cash paid recording deed of release from Jno. Hooff, trustee for wharf property,		$1 75		
1820.	" " " expense of recording will in Fairfax county,		1 70		
				3	45
11 m. 16	" Register's fee paid him,			6	67
	" R. I. Taylor as counsel in various cases for agreement,			30	
1821...1 m. 3	Cash paid Bank Alexandria, as per receipt endorsed on execution, being paid by the statement of the Register of Wills agreeably to the judgment as balance due the bank,			923	20
	2 1-2 per cent. commission on paying $965 10,			24	13
				$989	23
1 m. 5	To balance per contra, due Ph. Janney, Executor,			$631	91
	NOTE.—The above balance (on the final settlement of the estate) due me has arisen by my paying a number of debts in full, under an impression that there would be sufficient funds to pay the whole, and in addition to the loss of the above balance, the sum of $687 49 credited in my first account, rendered as received from Abijah Janney, 10 mo. 19, 1816, in account of his note, was raised by my endorsing a note for him at Bank of Potomac, to pay this sum and A. Janney & Co.'s debt, on which I shall lose twice the sum there credited—but say the	$687 49			
	To which add the amount of furniture I let the widow have without pay, and accounted for myself,	406 50			
	And loss of 20 per cent. on the stock, say,	125			
				$1218	99
	Whole amount,			1850	90
	My whole commissions on the business amounted to			$1826	06
	Making a loss of twenty-four dollars and eighty-one cents more than all the commissions charged.			24	81

PHINEAS JANNEY, Executor.

The Estate of David Lupton, Jun., deceased, in acct. with Phineas Janney, Acting Executor, Cr.

1818.			
4 m. 16	By balance as per acc't rendered and settled with the Orphans' Court, this day.	$ 321	73
7 m. 18	Cash rec'd of the Cor. of Alexandria, for D. Lupton's 1-4 money paid for a pump on Kg. street, in advance, . .	35	59
1821..1 m. 5	Balance due Phineas Janney after taking the stock in the Mechanics' and Union Banks, and Bank of Alexandria, as credited in the last account rendered. Which stock I have transferred to Ph. Janney, it having heretofore remained in the name of D. Lupton, jr., although it was accounted for by me at par, which was far above its value,	631	91
		$989	23

E. E. Alexandria, 1 mo. 25th, 1821.

PHINEAS JANNEY,
Executor of D. Lupton, Jun., deceased.

The entries in note on the opposite page were not made as charges against the estate, but merely to satisfy the parties that the business has not been conducted by me for the sake of profit.

PHINEAS JANNEY.

Returned, January 5, 1821, and ordered to be recorded.
(Teste.) A. MOORE, *Register of Wills.*

A copy. Teste. A. MOORE.

INVENTORY AND APPRAISEMENT OF DAVID LUPTON, JUN.'S ESTATE, RENDERED 4TH MARCH, 1815.

Orphans' Court, Alexandria County.

DECEMBER TERM, 1814.

Ordered, That Mordecai Miller, George Drinker, William Jolliffe, Elisha Talbett, and William H. Brown, or any three of them, do inventory and appraise the goods, chattels, and personal estate of David Lupton, jun. deceased.

(Teste) A. MOORE.

COUNTY OF ALEXANDRIA, SCT.

Appeared before me the subscriber, a justice of the peace for the county aforesaid, Mordecai Miller, George Drinker, and William H. Brown, and took the oath of appraisers prescribed by law.

Given under my hand, this 3d day of March, 1815.

AMOS ALEXANDER.

Pursuant to an order of appraisement from the Orphans' Court of Alexandria County to us directed, we the subscribers did this day value and appraise, the goods, chattels, and personal estate of David Lupton, jun. deceased, of which the following is a true inventory.

Given under our hands and seals this third day of the third month, 1815.

MORDECAI MILLER, [SEAL.]
GEORGE DRINKER, [SEAL.]
WILLIAM H. BROWN. [SEAL.]

1 mahogany bedstead, high post, with bed and bedding, sheets, blankets, counterpane and curtains,	$50	
1 stained do. do. do.	40	
1 do. do. low post, bed and bedding $25, 1 do. do. do. $20	45	
1 truckle do. with bed and bedding $12, 1 pine toilet table with cover $1.50	13	50
1 mahogany table and tray $10, 2 do. D tables $20,	30	
1 do. breakfast table $4, 1 cherry-tree do. $1 50,	5	50
1 bureau $12, 1 do $8, 1 cradle and furniture $8,	24	
1 woollen carpet $20, 1 home-made do. $3, 1 small chamber do. $2, 1 passage do. $2,	27	50
1 stair carpet $5, 1 grass do. $5, 1 candle stand (broken) $1,	11	
12 green Windsor chairs $10, 18 black do. $13 50, 2 dim do. $3, rocking do. $3,	27	50
1 looking glass $6, 2 small dressing do. $2, 1 Franklin stove $5,	13	
1 pair brass andirons, 1 small fender $10, 1 pair small brass andirons $4,	14	
1 pair brass top shovel and tongs $2, 1 pair small do. $1 50, 2 japanned trays $1 50,	5	
4 blankets $8, 3 counterpanes $12, 1 quilt $1 50, 6 sheets $6, 7 table cloths $8 75,	36	25
17 napkins and pillow cases $4 25, 3 window curtains $2, 3 do. yellow ground $4,	10	25
12 vol. books 7 75, 1 watch, seal, &c. $14, 1 plated castor $4,	25	75
6 silver table spoons $15, 9 tea do. and sugar tongs $5, 2 dozen knives and forks $5,	25	
2 brass candlesticks and 1 pair snuffers $2, contents of the cupboard china, queen's and glass ware $12,	14	
1 small lot of stone ware and small articles of tin ware in the kitchen,	3	
1 brass kettle $1 50, 1 bell mettle do. $2 50, 1 copper teakettle $2, 1 iron do. $1,	7	
1 iron wash kettle $1, 3 iron pots $1 50, 2 dutch ovens $1 50, 1 spider and 2 saucepans 50 cents,	4	50
2 gridirons 50 cents, 1 coffee mill 75 cents, 1 frying pan 50 cents, 1 warming pan $1 50,	3	25
2 flat irons and pair kitchen andirons $2 50, 1 pair shovel and tongs for kitchen, 1 iron crane $2,	5	50
Carried forward	$440	50

Amount brought forward	$440	50
1 safe $4, 1 tin kitchen $3, 2 pine tables for kitchen $2, 2 buckets $1,	10	
2 large cedar tubs $2, 2 small do. $1, 18 pewter plates $3, pewter dishes $2,	8	
1 servants' bed and bedding $5,	5	
1 writing desk and stool in the counting room in his warehouse,	3	
1 pewter ink stand, sand box and slate 70 cents, 2 pair small scales and weights $5,	5	70
2 pair large size scales and weights, say 11 fifty-sixes and one 28 lb.	20	
2 tin scoops 60 cents, 2 large tea cannisters $2, 2 block fall and car hooks $3	5	60
1 Franklin stove (cracked) and small grate in counting room $8, 1 gallon measure and marking pot 75 cents,	8	75
1 half bu hel, broken spade and shovel $1 20, 1 dozen bed cords $3, 4 hair sifters $1,	5	20
1 lot stone jugs and bottles $4 67, 1 large arm chair for counting room $3,	7	67
1 bundle hemp $8, part of a cask of flax seed $2 50,	10	50
1 horse, saddle and bridle $120, 1 gig and harness $150, 1 cow $15,	285	
1 half concern in a carriage and harness,	75	
— Bushels of salt at 6 cents, — tons of plaster at $20 per ton, the salt to be measured and plaster weighed.		
400 barrels (supposed to be thereabouts) of super flour of last year $3 50,	1400	
800 do. (supposed as above) of fine flour of last year at $3 per barrel,	2400	
1 share of Alexandria Bank stock $200, 63 shares Union Bank stock $365,	565	
25 shares Alexandria Fire Insurance stock, *a* $4 50,	112	50
Exclusive of the salt and plaster,	$5366	92

PHINEAS JANNEY, Executor.

Returned March 4, 1815, and ordered to be recorded.

A. MOORE, *Register of Wills.*

Account of sales of the personal property of D. Lupton, deceased, made by Phineas Janney, one of the Exrs. of said Lupton, and acting by order of and for the whole.

1815.	*Nancy Lupton widow of the said David Lupton, deceased.*			
5 mo. 15	1 high post mahogany bedstead, with curtains, bed, sheets, blankets, &c.		$50	
	1 do. stained, with bed and bedding and curtains,		40	
	1 iron post stained bedstead, bed and bedding,		25	
	1 do. do. do.		20	
	1 mahogany dining table and tray,		10	
	1 truckel bedstead with bed and bedding,		12	
	1 mahogany breakfast table,		4	
	1 pine toilet ditto with cover,		1	50
	1 bureau $12, 1 ditto $8,		20	
	1 cradle and furniture,		4	
	1 carpet (homespun,)		3	
	1 small chamber carpet $2, stair do. $5, passage do. $2,		9	
	1 grass carpet $5, 18 black chairs $13 50,		18	50
	2 arm chairs $3, 1 rocking ditto $1,		4	
	1 looking-glass $6, 2 small dressing do. $2,		8	
	1 pair brass andirons $4, shovel and tongs $1 50,		5	50
	4 blankets $8, 3 counterpanes $12, 1 quilt $1 50,		21	50
	6 sheets $6, 7 table cloths $8 75, 17 napkins and pillow cases $4 25,		19	
	3 window curtains $2, 3 do. yellow do. $4,		6	
	12 volumes books $7 75, 1 silver watch $14,		21	75
	2 japan trays or waiters $1 50, 1 plaited castor $4,		5	50
	6 table silver spoons $15, 9 tea do. and sugar tongs $5,		20	
	2 dozen knives and forks $5, 2 brass candlesticks, 1 pair snuffers $2,		7	
	Contents of the cupboard, china, glass and queen's ware,		12	
	Stone and tin ware, small articles in kitchen,		3	
	1 brass kettle $1 50, 1 bell mettle do. $2 50,		4	
	1 copper tea kettle $2, 1 iron do. $1,		3	
	1 iron wash kettle $1, 2 iron pots and 1 dutch oven $1,		2	
	1 spider and 2 small sauce pans,			50
	2 gridirons 50 cents, 1 coffeemill 75 cents, 1 fryingpan 50 cents, 1 warming pan $1 50,		2	
	2 flat irons and 1 pair kitchen andirons,		2	50
	1 pair shovel and tongs for kitchen $1, 1 iron crane $2,		3	
	1 safe, part tinned $4, 1 tin kitchen $3,		7	
	2 pine tables for kitchen $2 and 2 buckets $1,		3	
	2 large cedar tubs $2, 2 small do. $1,		3	
	18 pewter plates $3, 3 pewter dishes $2,		5	
	1 servants' bed and bedding $5, 1 cow $15,		20	
			406	50
6 mo. 10	John Swayne, sold him			
	1 woollen carpet,	$45 00		
Payt. rec'd.	1 pair mahogany D dining tables,	30 00		
	1 pair brass andirons, shovel, tongs and fender,	22 00		
	1 dozen green chairs,	20 00		
	1 candle stand $4, 1 iron pot and dutch oven $4,	8 00		
			125	00
6 mo. 15	B. & Charles Plummer.			
	1 writing desk and stool, ink stand and sand box,	$5		
	2 large tea cannisters,	1 50		
	12 bed cords $3, 4 hair sifters 75 cents,	3 75		
	25 stone jugs and 8 bottles (glass,)	6 00		
	14½ lbs. pepper and alspice (in cannisters) at 30 cents,	4 35		
	1 half bushel 3-9,	62½		
	Block fall and car hooks.	4		
	1 large arm chair for counting room,	4		
	6 bushels salt at 100 cents,	6		
	Part of a cask of flax seed,	2 50		
			37	72
		Carried forward	569	22

Payment received.

	Amount brought forward	560	22
9 mo. 5	David Lupton.		
Payt. rec'd.	1 gig and harness,	$150	
12 mo. 7	Horse, saddle and bridle,	105	
" 20	C. F. Peyton.		
Payt. rec'd.	1 pair small scales,	4	
	John Throop.		
Payt. rec'd.	Scale beam, &c. $10, 56 weights,	30	
1815	John McPherson & Son, (*a* 6 mo.)		
4 mo. 17	679 bls. super flour, *a* $4 $2716		
	316 " fine do. *a* 3½ 1106		
	11 " condemned do. *a* 2½ 27 50		
	52 " 104 half barrels *a* 4½ 234	4083	50
9 mo. 11	Jona. Scolfield (30 days.)		
Payt. rec'd.	100 barrels super flour, *a* $7 $700		
	15 do. do. do. *a* 6 90		
	4 do. fine do. *a* 5½ 22	812	
	1117 barrels.		
1816	Peter Saunders.		
3 mo. 10	1 Franklin stove from dwelling house $10,	10	
Payt. rec'd.			
1815	Sales of 35 tons of plaster to sundry persons at an average of		
5 mo. 1	$25½ clear of weighing,	898	87
	Corse and Rounsaville.		
10 mo. 20	25 shares of Fire Insurance stock, *a* $5	125	
		6787	59
	Unsold.		
	1 share Alexa. Bank stock,		
	63 " Union do. &c.		
	10 " Mechanics Bank stock, not appraised in consequence of my not knowing at the time of its belonging to the estate, having never seen the certificate until some time after the appraisement. The stock has been kept 'till now, thinking it of no consequence to sell it as it was, and is drawing interest.		
1816			
10 mo. 12	D. Lupton's interest in the unsold carriage is now sold to Peter Saunders (who owned the other half) for,	64	
	Amount sold,	$6851	59

E. E. Alexandria 10 mo. 8th, 1816.

PHINEAS JANNEY,
Executor of D. Lupton, junr. deceased.

Returned Oct. 16, 1816, and ordered to be recorded.
(Teste.) A. MOORE, *Register of Wills.*

A copy. (Teste.) A. MOORE, *Register of Wills.*

EXHIBIT A. REFERRED TO IN DEFENDANT'S ANSWER.

Exhibit referred to in Defendant's Answer.

Exhibit A.

DISTRICT OF COLUMBIA, *to wit:*

[SEAL] *The United States of America.*

To the Marshal of the District of Columbia, *Greeting:*

We command you that of the goods and chattels of Phineas Janney, executor of David Lupton, jun., deceased, late of the county of Alexandria, in your said district, you cause to be made the sum of two thousand five hundred dollars, which the President, Directors and Company of the Bank of Alexandria, late in our Circuit Court of the District of Columbia, for the county of Alexandria, recovered against him for debt; also nine dollars and ninety-eight cents, which to the said president, directors and company in the said court were adjudged for their damages, occasioned as well by reason of detaining the said debt, as for their costs by them in this behalf expended, whereof he is convict, as appears to us of record, and that you have the same before the Honorable Judges of the Circuit Court of the District of Columbia for the county of Alexandria, at the court-house in Alexandria, on the fourth Monday in August, to render to the said president, directors and company of their debt, damages and costs aforesaid, and have then and there this writ.

Witness William Cranch, Esquire, Chief Judge of our said court, this 18th day of June, in the year of our Lord 1819.

(Signed) EDM. J. LEE, *Clerk.*

Copy of Endorsement on the back of the within Execution.

MEMORANDUM.

This Execution (costs excepted) to be discharged by the payment of such dividend as shall appear by settlement with the Orphans' Court they are entitled to receive out of the assets of the deceased.

(Signed) EDM. J. LEE, *C. C.*

The balance due the Bank of Alexandria is $923 20, as appears upon a final settlement of the estate of David Lupton, jun., rendered to the Orphans' Court by Phineas Janney, the executor.

(Signed) A. MOORE,
Reg. of Wills.

Dec. 23, 1820.

The executor is to pay the costs (attorney's fees excepted) and deduct the same from the above sum, Dols. 923 20.

(Signed) A. MOORE,
Reg. of Wills.

Bank of Alexandria,
Jan. 3, 1821.

I have received of Phineas Janney, Esq., nine hundred and twenty-three dollars twenty cents, on account of the within execution. The costs charged therein to be paid by the bank.

This payment is made agreeably to the statement of the Register of Wills.

(Signed) J. L. M'KENNA, *Ch.*

$923 20.

STATEMENT B. REFERRED TO IN DEFENDANT'S ANSWER.

B. & C.

Statement of the estate of D. Lupton, jr. deceased.

Amount of funds received by P. Janney, executor, per 1st account rendered,	$3868.57	
do. do. do. 2d do.	20840.98	net sum
do. do. do. for corporation for pump since do.	35.59	received.
	$24745.14	
Deduct commission for collecting 5 per cent.	1237.45	
		$23507.89
Cash paid the following sums, which I considered were to be paid in full, viz.		
Painter's bill $25, taxes 1814, $17.45, rent $400,	442.45	
John Muir for coffin $25, Withers for winding-sheet and shroud $24,	49	
Register of wills $16.68, $12.67, $16.86,	46.21	
R. M. Scott amount due Trust on wharf property,	2447.50	
P. Saunders, a partner of D. L., balance that arose by his paying the debts in part of A. Janney & Co. at the bank of Alexandria. The company was D. Lupton, P. Saunders, and A. Janney,	4895.43	
Paid recording will in Fairfax county 1.70, " " release from Hough for deed trust 1.75,	3.45	
Paid Instalments on bank stock, per second account rendered, which added so much to the value of the stock, that was then held for the estate,	123.50	
Amount of entry of carriage in second account,	64	
	8080.54	
Add commission for paying 2½ per cent.	202.01	
		8282.55
		15225.34
Deduct commission of 2½ per cent. on paying $14,834,		371.34
To pay the sum of $16,972; 12 remains,		14854.00
Which makes a dividend of dollars 87.52 per $100, bank of Alexandria 3 notes, principal and interest paid.		
5 mo. 28, 1817, as entered on 2d account, rendered amount to 1 note unpaid for $2500	12638.14	
Protest 1.70		
—$2501.70		
y m d		
Int. per 12 mo. 27, 1815 to 1817, 5 mo. 28 is 2, 5, 1, 362.92		
	2864.62	
Whole debt		15502.76
Dividend of $87.52 for $100 on $15502.76 is	13568.01	
Was paid 5 mo. 28, 1817, as above,	12638.14	
Balance to be paid	929.87	
Deduct register's fees, omitted,	6.67	
	923.20	

Errors excepted.

PHINEAS JANNEY, *Executor.*

Alexandria, 11 mo. 16, 1820.

AMOUNT C. REFERRED TO IN DEFENDANT'S ANSWER.

C.

Amount of debt due the estate of David Lupton, jr. deceased, uncollected.

John McPherson and Son, for balance on flour sold them by the executors of D. L.	$3040.20	
Ditto on bank acct. due the estate,	140 00	
Ditto per S. M. McPherson, including J. McDennick's debt,	80.00	
		$3261.20
Against which J. McPherson and Son exhibited a charge for payment of a note of D. Lupton's, on which they were endorsers (which P. J. believes was loaned to J. McPherson and Son, amounting, principal, interest and costs to	1863.21	
And sundry other charges amounting to (a very small part of of which I think correct,)	1057.75	
		2920.96
Balance due the estate by J. McPherson and Son's own statement, per Daniel,	340.24	
A note of J. McPherson and Son, transferred to the executors of D. Lupton, jr. by A. Janney & Co. as ½ of a balance due the firm, date 11 mo. 20, 1816, and payable on demand,		263 56
A note of Abijah Janney's,	1077.97	
Received in part credited in account rendered Orphans' Court	687.49	
		390.48
Reuben (black man) not found,	2.71	
Ellis Price, insolvent,	3.75	
Moses R disputed,	6.00	
M. Young, not found,	5.00	
William White, offset,	15.34	
Thomas Neill, balance of account,	12.30	
William Kennworthy, offset,	4.50	
		49.60
		$1043.88

Rendered to the Orphans' Court, Nov. 16, 1820, and ordered to be recorded.

A. MOORE, *Register of Wills.*

A copy. (Teste.) A. MOORE, *Register of Wills.*

COMPLAINANT'S DEPOSITIONS.

Notice:—To Phineas Janney, Esq.

SIR,

Please take notice, that I shall proceed to take the depositions of John McPherson, and others, at the office of the Master Commissioner Bent, in the town of Winchester, in the state of Virginia, on the 4th day of January, in the year 1834, between the hours of nine o'clock in the morning and five in the evening of that day, and so on from day to day, until the depositions shall all be taken, to be read in evidence in a certain matter in chancery, now pending in the Circuit Court of the District of Columbia, held for the county of Alexandria, in which I am complainant and you are defendant.

Yours, &c. &c.

ANN LUPTON,

By her Attorney,

T. W. HEWITT.

December 26, 1833.

I acknowledge that the within notice was shewn to me, and that I dispensed with a copy.

PHINEAS JANNEY.

December 26, 1833.

District of Columbia, to wit:

The United States of America,

To Daniel Gold and George H. Clark, Esquires, gentlemen, Justices of the Peace for Frederick county, Virginia—*Greeting*:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining John McPherson and [SEAL.] Nathan Lupton, two witnesses in behalf of Ann Lupton, in a suit depending in our United States' Circuit Court for the District of Columbia for the county of Alexandria, between Ann Lupton and David Lupton's executors: We therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together and the witnesses aforesaid before you, or any two or more of you that you call, and cause to come, and diligently examine on the holy evangelist: of Almighty God, touching the matter in controversy between the aforesaid parties: and when you have examined the aforesaid witnesses, and taken their depositions aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness, William Cranch, Esquire, Chief Judge of our said court, this 24th day of December, 1833.

EDM. I. LEE, *Clerk*.

DEPOSITIONS OF JOHN M'PHERSON AND NATHAN LUPTON.

The depositions of John McPherson and Nathan Lupton, taken at the office of Master Commissioner Bent, in the town of Winchester, in the state of Virginia, on the 4th day of January, 1834, between the hours of nine o'clock in the morning and five in the evening of that day, to be read in evidence in a certain matter pending in the Circuit Court of the District of Columbia, held for the county of Alexandria, in which Ann Lupton is complainant, and Phineas Janney, defendant.

Nathan Lupton having first made solemn affirmation, deposeth and saith:

Question by Ann Lupton, by her counsel. Do you know at what time David Lupton, junior, late of Alexandria, D. C., died?

Answer. I think it was in the latter part of November, 1814.

By same. Where were you living at the time of his death?

Ans. I had been living with him previous to his death, and I was on a visit to my father's at the time of his death; but returned to his house before he was buried.

By same. How long had you lived with him before his death?

Ans. I went there to live, I think, in the month of October, 1811, and lived there all the time up to his death. I was absent, sometimes, up the country, either on business or on a visit; not more than a month or two at a time.

By same. Did you continue to reside in Alexandria after the death of David Lupton, junior; if yea, how long?

Ans. I did: I lived there 'till the year 1823, with the exception of four months, in the year 1815, when I was at sea.

By same. What business were you engaged in between 1815 and 1823.

Ans. I was engaged as clerk part of the time, for Phineas Janney the first part of the time. The beginning of the year 1816, I lived with Peter Saunders, until Sept. or October, 1816. I lived with Peter about a month or six weeks in the early part of the year 1815. The last part of the time I lived in Alexandria, I was engaged in the flour business for myself, or as partner of Isaac Gibson.

By same. Do you know who qualified as the executors of David Lupton, junior—If yea, state where they resided?

Ans. I have understood that my father, David Lupton, senior, John McPherson, and Phineas Janney, qualified as his executors. My father lived in Frederick county, Virginia, about seventy or seventy-five miles from Alexandria. John McPherson lived in Jefferson county, Virginia, about sixty miles from Alexandria, and Phineas Janney lived in Alexandria.

By same. Where did the estate of David Lupton, jr., lie?

Ans. It was all in Alexandria, with the exception of the Triadelphia Mill property, which was in Fairfax county, about four miles distant.

By same. Can you say who managed the business of David Lupton's estate, who made sales of his property and effects, collected the assets, settled the accounts, disbursed the assets, &c.?

Ans. Phineas Janney, as far as ever I heard or knew. I have no question of this fact. I never saw any body else, or heard of any body else, except as to signing deeds when conveying real estate.

By same. In what business was David Lupton, jr., engaged just preceding his death in Alexandria?

Ans. He was engaged in the flour business, in buying and selling flour in Alexandria, and in manufacturing flour at the Triadelphia Mills in Fairfax county.

By same. Had he any flour of his own on hand at the time of his death, if so state the quantity as well as you recollect, and whether it was in his warehouse or not?

Ans. He had a considerable quantity, the amount I do not exactly know. I suppose about a thousand barrels or upwards. This was flour on his own account. Besides this there was a large amount of flour belonging to the concern of Abijah Janney & Co.

By same. Do you know what became of the flour he had on his own account?

Ans. It was sold to John McPherson & Son.

By same. How do you know the fact that it was sold to John McPherson & Son?

Ans. I had it from Phineas Janney himself, that she had sold it to John McPherson & Son; and I likewise had it from Daniel McPherson, who was one of the firm of John McPherson & Son, that he had bought it from Phineas Janney.

By same. Under whose control was the flour after the death of said Lupton, jr., and before the sale to Jno. M'Pherson & Son?

Ans. Under the control of Phineas Janney, that is, David Lupton's flour which he had on his own account.

By same. How do you know the fact that it was under the control of Phineas Janney?

Ans. He had the key of David Lupton, jr.'s, warehouse, in which some of the flour was. There was some in the storehouse occupied by Daniel Dougherty, from whom they rented it. Dougherty occupied the counting room, and had the key of it, I believe.

By same. You say the flour on hand, belonging to David Lupton and on his own account, was sold to McPherson & Son, was this sale a public or a private sale?

Ans. I understood from both parties, that it was a private sale. I know it was not a public sale, for there was no public sale of his property.

By same. How long after the death of David Lupton, jr., was it before the flonr was sold to McPherson & Son?

Ans. I think it was in April or May, 1815.

By same. Do you know who delivered this flour to McPherson & Son. If yea, tell us all you know in relation to the delivery thereof?

Ans. I delivered between six or seven hundred barrels to McPherson & Son, on board the ship Wallace, by the order of Phineas Janney, with whom I was living at the time. The balance, I believe, was delivered by John McPherson, jr., who was substituted in my place. I was called off on some other business.

By same. Was this delivery made immediately after the sale to McPherson & Son, or not?

Ans. I think it was delivered in the course of a short time after the sale.

By same. In what business was McPherson & Son engaged at that time?

Ans. They were engaged in the shipping business in part, in buying and selling flour, plaster, salt, &c. They were also extensively engaged in the tanning business.

By the same. Were they in good or bad credit at that time?

Ans. I believe they were in good credit, to the best of my knowledge.

By same. How long did they continue in good credit?

Ans. They continued in good credit to the best of my knowledge in the year 1817 or 1818, perhaps, 1818.

By same. Do you know when the firm of J. McPherson & Son, failed?

Ans. I think it was in the year 1819, as well as my memory serves me. In 1818 or 1819.

By same. Had John McPherson, one of the firm of J. McPherson & Son, any property independent of that employed in the concern. If any, what was it, where was it, and what was it worth?

Ans. He had a plantation in Jefferson, which I understood sold for almost thirty thousand dollars, on which he lived at the time of the sale of the flour, and afterwards until it was sold, which I think was in the year 1817 or 1818.

By same. Is this John McPherson one of the firm of John McPherson & Son, the same person who qualified as one of the executors of David Lupton, jr.?

Ans. He is.

By same. Was he in Alexandria at or about the time of the sale of the flour to the firm of Jno. McPherson & Son, or at its delivery?

Ans. I do not think he was there at either period. If he was, I did not see him.

By same. Was he or the other executors, David Lupton, sen., from the death of David Lupton, jun., up to 1820 or thereabouts, much or little in Alexandria?

Ans. I think John McPherson was there frequently after 1818, having moved to Fairfax county, Va., about that time. Prior to that time he lived in Jefferson county, Va., and was seldom in Alexandria, while I was in the town myself, he might have been there while I was absent. David Lupton, sen., was never in Alexandria but once,

to my knowledge, after he qualified as executor, and I think that was in 1818 or 1819.

By same. When did Ann Lupton, the widow of David Lupton, remove from Alexandria, and where did she remove to?

Ans. She left Alexandria in the spring or summer of 1815, and lived with her father in Jefferson, and my father in Frederick, until about the year 1818; she then returned to Alexandria, and I boarded with her until the year 1823. She then removed to Frederick county Va., where she has been living with me ever since.

By same. Look in the paper (marked and endorsed on the back "plaintiff's exhibit A.") purporting to be a letter from Phineas Janney to the plaintiff, dated at Alexandria, 12 mo. 29, 1816, and say, in whose handwriting that paper is, the address on the back of the letter, and the signature "Phineas Janney." Before you answer the foregoing question, tell us whether you are acquainted with the handwriting of Phineas Janney, and if so, to what extent?

Ans. I am acquainted with the handwriting of Phineas Janney, having frequently seen him write, and in answer to the foregoing part of the question, he says that the address on the back "Nancy Lupton at John Mc. Pherson's, care of Samuel Horwell, Charlestown, Jefferson County, Va., (charge P. I.) 2 sheets," also the body of the letter including the words at the bottom "please enclose, &c." with the signature "Phineas Janney," are all in the handwriting of Phineas Janney.

By same. In whose hand-writing is the paper now shewn you, endorsed on the back thereof "Plffs. exhibit B." the whole of it?

Ans. That part of it marked "Copy," at the top of the first page and ending with the words "I remain very respectfully," &c., I believe is in the handwriting of Samuel M. Janney. The signature "Phineas Janney" thereto is Phineas Janney's own writing. The postscript immediately following down to the word "Charlestown" is also the handwriting of Samuel M. Janney, I believe the words "respectfully thy friend," and the signature thereto, Ph. Janney, is the handwriting of Phineas Janney, all the rest of the body of the letter including the signature of "Phineas Janney," and the address on the back, "David Lupton, Applepy Ridge, near Winchister, Va." is in the handwriting of Phineas Janney.

By same. In whose handwriting is the paper now shewn you, (endorsed on the back thereef marked Plffs. exhibit C.) including the words "sketch of the estate of D. Lupton, jun. deceased, Alexd. 3 mo. 20. 1817?"

Ans. The whole paper, figures and all, including the words "sketch of the estate of D. Lupton, Jr. deceased, Alex. 3mo. 20, 1817," with the exception of the words marked "Plffs. exhibit," is in the handwriting of Phineas Janney.

By same. Have you ever seen a paper, or copy of a paper, said to have been signed by the plaintiff Ann Lupton, authorizing the executors of her deceased husband to sell his estate, either at public or private sale, as they might deem most advantageous?

Ans. I never have, except the copy of such a paper sent to her by the clerk of the Orphans' Court of Alexandria.

By same. Do you know whether that paper was signed by her in fact, before or after the sale of the flour to McPherson and Son.

Ans. I cannot answer it in any way, except by exhibit A., and from that I should say it was some time after.

By same. Do you know what were the circumstances of Abijah Janney at the time of D. Lupton, Jr.'s, death?

Ans. They were concerned together with Peter Saunders in manufacturing flour at the Triadelphia mills, near Alexandria, of which they were the owners; after the death of David Lupton, Jr., he continued with Peter Saunders to manufacture flour at the said mills; they manufactured over among other things a large quantity of old flour, belonging to the firm of Abijah Janney and Co., of which company David Lupton was one, and they continued on until the sale of the share of David Lupton in the mill, which was one-third to Allein G. Smith, he then carried on the mill under the firm of Janney and Smith, for some time, how long I do not know, but I fancy until the sale of the same to Mordecai Miller. During all this time said Abijah Janney appeared to be in good credit, and was engaged in buying wheat, manufacturing it into flour, and selling it.

By same. Do you know anything of the pecuniary circumstances of Thomas Neill at the time D. Lupton, jr., died?

Ans. He was engaged in manufacturing and selling shoes in Alexandria, in partnership with Wm. Morgan, until about the year 1817, I think. They were extensively engaged in that business. He left Alexandria then, and removed to Jefferson city, where he staid a short time, I believe, and then removed to Ohio.

By same. Was he in good or bad credit, while he lived in Alexandria?

Ans. I never heard of his credit being bad, until a short time before he left Alexandria, when his circumstances were considered a little doubtful, and perhaps left there owing some money.

By same. Do you know what the Prince-street-wharf property cost at the sale made of it by R. M. Scott, and at which Lupton and Saunders, became the purchasers?

Ans. I was not at the sale; but I understood it sold for six thousand dollars, or thereabouts. But the deed of trust, taken by Scott, to secure the purchase money will shew. The property, I believe, was originally bought by A. Janney, Saunders and Lupton. The two last became the owners of it afterwards.

By same. Do you know, whether D. Lupton, Jun. before his death, paid, himself, any part or portion of the purchase money for this property. If any, say what?

Ans. I have understood that he paid the first payment. This I understood, perhaps from Saunders, but, it has been so long, I cannot say positively.

Have you ever, at any time since the death of David Lupton, jun.,

seen the books of Abijah Janney & Co. If so, when and for what purpose did you look at them.?

Ans. I have seen them frequently, having been left in my possession by Peter Saunders, and had them in my possession until I left Alexandria, when I left them in possession of Abijah Janney, one of the surviving partners. The books were at that time unsettled to the best of my knowledge. Green had been the clerk, and was the last clerk Peter Saunders had; he was engaged in settling the accounts, but told me could not settle them. He told me he did not believe any man could settle them, as they ought to be settled.

By same. Did you ever observe from your examinations of these books, whether or not an account had been kept of this old flour, of which you have heretofore spoken in a previous part of your deposition as having been manufactured over, after the death of D. Lupton, jun.?

Ans. It was partially done so. But I do not think they contained a complete account. The mill book, kept at the mill, and the store book, would not tally. This Clement Green, the clerk, frequently told me.

By same. Can you say, as to the other accounts in those books, whether they were regularly or irregularly kept, loosely or otherwise?

Ans. They were loosely and irregularly kept, from the examination I made of them.

By same. Had you any conversation or conversations with Phineas Janney, at any time, with respect to a certain note, discounted at the Bank of Potomac, drawn by D. Lupton, jun., for about $1,600, and endorsed by John McPherson and Son. And if so, state any thing that passed between you on the subject of that note?

Ans. I had conversation with Phineas Janney upon the subject. He told me Daniel McPherson had acknowledged to him, it was borrowed note, and Daniel McPherson told me the same thing. And he, Janney, told me that Daniel McPherson promised to pay it, if he would hold it up for a short time. Phineas Janney was, at that time, a director in the Bank of Potomac.

This conversation was before Janney closed his accounts as executor of David Lupton, jun.

NATHAN LUPTON.

DEPOSITION OF JOHN M'PHERSON.

John McPherson, being first affirmed deposeth and saith. By counsel for Ann Lupton Please state whether you were living in Alexandria about the beginning of the year 1815?

Ans. I was not living in Alexandria, in the year 1815. I was there in March and April, 1815, preparing to go to sea. I was there frequently in the winter of 1814-15, previous to my going to sea; I returned from sea in the fall of 1815, and was there during the following winter, and made that place my home until 1818. Then I went

to Mount Hepburn, a few miles from town, and lived there some two or three years or more. During all this time I was frequently in Alexandria.

By same. Can you say from your own knowledge who arranged the business of David Luptons' jun., estate? State any facts or circumstances you may know, on which your knowledge rests in relation to the subject.

Ans. I have always understood that Phineas Janney transacted the business. The only fact I know relative to it, is, that I delivered by the order of Phineas Janney, the balance of the flour, I believe between three and four hundred barrels, that was left undelivered by Nathan Lupton on board the ship Wallace, of which I was supercargo.

By same. Do you know from whom John McPherson and Son purchased this flour?

Ans. I always understood from Daniel McPherson, of the firm of John McPherson and Son, that they purchased it from Phineas Janney.

By same. Was the partner of John McPherson ever engaged in the transactions of the business of the firm of John McPherson and Son; such as making contracts for the concern, buying and selling, &c.?

Ans. Never; John McPherson, was not in Alexandria, after he qualified as executor of David Lupton, before I went to sea, to the best of my rememberance. I went to sea the 29th of April, 1815. John McPherson lived in Jefferson city, Virginia, was not at all engaged in the mercantile transactions of the firm of John McPherson and Son. The partner Daniel McPherson, exclusively managed the business, and he made the contract for the purchase of the flour of David Lupton's estate, as he told me.

By same. In what business was the firm of John McPherson and Son engaged in Alexandria?

Ans. The firm of John McPherson and Son was a mercantile concern. They were principally engaged in the shipping business, in buying and selling flour, plaster, salt, &c.

By same. When did the firm of John McPherson and Son fail?

Ans. I think they stopped payment in 1819; I am not certain.

By same. In what sort of credit were they up to the failure of the concern? State how long they continued in good credit; when they first became in doubtful or bad credit.

Ans. They were extensively engaged in business, certainly for the years 1815, '16, '17, and part of 1818, to the best of my remembrance. In all this time they were in good credit; they made large contracts upon credit in Baltimore, and elsewhere.

By same. Did John McPherson own any property independent of his interest in the firm of John McPherson and Son between 1815 and 1818, and if any, what sort of property was it? what was its value? &c.

Ans. He owned property, land and mills in Jefferson county, which he sold in the fall of 1816, or spring of 1817, one or the other, I cannot tell which, for about thirty thousand dollars.

By same. Are you acquainted with the handwriting of Phineas Janney; if so, to what extent?

Ans. I have seen him write, and seen his writing.

By same. Look at the papers hereto annexed, and endorsed on the back thereof plaintiff's exhibits A, B, & C, and say, in your opinion, whose handwriting those (several) papers are?

Ans. I am not certain in whose handwriting the two first pages of paper marked B is, but the residue of the writing in the three papers, including all the signatures "Phineas Janney," is, in my opinion, in the handwriting of Phineas Janney.

By same. Have you any knowledge of what Abijah Janney's circumstances were about the year 1815?

Ans. The credit of the firm of Abijah Janney & Co. was good, at that time, as far as I know.

By same. Do you know how long the credit of Abijah Janney continued good?

Ans. I believe that the credit of Abijah Janney, after the dissolution of the firm of Smith, Janney & Co., was not so good. Prior to that time, it was good.

By same. Please state if you know any thing of the pecuniary circumstances of Thomas Neill, about the year 1815, and from that time till 1818.

Ans. His credit was good, I believe, in 1815 and 1816. The latter part of the time he was in Alexandria, I believe his credit was not so good. After he removed from Alexandria to Jefferson, to which place he removed immediately from Alexandria, he engaged in the milling business, under the firm of Neill & Tucker. He lived there about a year, to the best of my remembrance. From thence he removed to the western country.

And further this deponent sayeth not.

JOHN McPHERSON.

State of Virginia,

Frederick County, to wit:

We the subscribers, justices of the peace in and for the county of Frederick, and state of Virginia, (and who hereby certify ourselves justices, and now at the date hereof in full commission,) do hereby certify that the foregoing depositions of Nathan Lupton and John McPherson, were taken, affirmed to, (they being of the persuasion of Quakers, and conscientiously and scrupulous upon the taking of an oath) and subscribed by the witnesses on the three foregoing sheets of paper, this day, (January 4th, 1834,) at the office of Lemuel Bent, in Winchester, between the hours prescribed in the notice hereto attached, and by virtue of the annexed commission from the United

States Circuit Court for the District of Columbia and County of Alexandria.

The exhibits A, B & C, referred to in the foregoing depositions as part thereof, are also herewith enclosed.

Certified under our hands and seals this 4th day of January, 1834.

DANIEL GOLD, (SEAL.)
CHARLES H. CLARK, (SEAL.)

Exhibits referred to in Complainant's depositions.

A, LETTER OF P. JANNEY TO A. LUPTON, REFERRED TO IN COMPLAINANT'S DEPOSITION.

Alexandria, 12 *month* 29*th*, 1816.

NANCY LUPTON.

DEAR SISTER—I have this day written to thy father, in answer to his letters respecting a suit ordered by the Bank of Potomac against Jno. McPherson, as endorser of a note of D. Lupton, jun., deceased, for $1,600, which letter I wish thee to see; please ask him to shew it to thee, as it will fully explain the business respecting the settlement of the estate. The note alluded to is one that was lent by D. Lupton, jun., to John McPherson and Son, and the suit is now brought in consequence of Daniel refusing to pay it. Had it been a note due by D. L. I would have paid it myself, at the same time that I paid his debt at the Bank of Potomac. But my letter to thy father will fully explain it, and I wish thee most particularly to see the whole letter, in order that thee may know how the business stands. I have sold the wharf property to L. & Fowle, for ten thousand dollars, payment to be made 1st of the 3d month next, when possession is to be given. The warehouse is insured, and the wharf is at their risk from time of sale. I hope to settle up the estate in the spring, and if it is not done it will not be my fault.

In consequence of the will of D. Lupton not stating, expressly, whether the sale of his personal and real estate should be at *public* or *private* sale, I would thank thee to sign the enclosed certificate or memorandum, authorizing us to sell, either at public or at private, as the judge of the Orphans' Court says he would prefer having it for his authority.

I also forward a bill of sundry articles of household goods, appraised, taken by thee at the appraisement, which I would thank thee to sign thy name to, acknowledging to have received them, to enable me to account for them with the Orphans' Court; the amount will be charged to thee, to come in when a final settlement of the estate takes place.

I remain, very sincerely, thy friend and relative,
PHINEAS JANNEY.

Please enclose the certificate and bill to me, per mail, in a letter.
P. J.

The above letter is directed to "Nancy Lupton, at John McPherson's, care of Samuel Howell, Charlestown, Jefferson county, Virginia. Postmarked Alexandria, January 6—paid 20. (Charge P. J.) 2 sheets.

B, REFERRED TO IN COMPLAINANT'S DEPOSITION. LETTER P. JANNEY TO J. M'PHERSON.

Alexandria, 12*mo.* 21, 1816.

JNO. MCPHERSON.

ESTEEMED FRIEND—Thy favour of the 14th inst. is received this day. The suit thee mentioned was ordered by the Bank of Potomac, a few days since, in consequence of Daniel McPherson, as the representative of Jno. McPherson and Son, refusing payment, or *to to* offer security for the payment, or, in fact, to acknowledge that they were to be the payors of D. Lupton, jun.'s note for $1,600, on which they appear as endorsers, but for whose accommodation, in fact, the note was given, it being *lent* by D. Lupton, jun., as appears by the regular entries in his books, from the commencement of the note being offered for discount; and as a further proof of its being a lent note, Daniel promised to me, some time after the decease of D. Lupton, that McPherson and son would pay it, but asked, as a favour, that I would let it lay over at the bank for some time, without stating to the board that it was a lent note, and as soon as he could with convenience, it should be taken up. Since then I have, as executor of D. Lupton, jun., paid all the money that he owed to the Bank of Potomac, on his own account, and refused payment of the $1,600, stating the facts as they were to the Board; that the note was lent, and that I could not, in justice to the estate, pay the amount, unless compelled to do so, in consequence of which they have ordered a suit against me as executor of David Lupton, jun.; and the president of the bank was directed to call on Daniel to know if he would make any arrangement for the payment, [immediate payment was not demanded,] and if not, the president was to bring suit. Consequently, when Daniel refused having any thing to do with it, the president had no alternative but to order the suit, of which Daniel was informed, that is, that it would be done, and I took it for granted that he had informed thee. I believe I can safely say, that the bank is only desirous of having the debt secured, and by no means wish to prosecute the suit, if any satisfactory arrangement can be made.

I have sold to Lawrason and Fowle, D. Lupton's half of the wharf property for $10,000, payment on the first day of the 3d. mo. next, when they are to have possession; there will then remain very little excepting the aforementioned unpleasant business of the $1600 note, and the amount of the flour sold John McPherson and Son, yet unpaid for, to prevent a full settlement of the estate, which I much wish to see accomplished. Perhapse some arrangement might be made for a

part of the money due for the flour to be secured to the widow, for what may be coming to her on settlement of the estate.

I remain, very respectfully and sincerely thy friend,

PHINEAS JANNEY.

P. S. 12mo. 29.

I was this day favored, with thy letter of the 25th inst., which reminded me of my neglect of forwarding the foregoing letter; on making inquiry for thy son John, after I had written it, I found he had left town that evening; since then I have not met with an opportunity, and shall now send this per mail to Charlestown.

From thy last letter I find thou art uninformed of the cause of the suit, which my first letter will unravel. I can assure thee that if the note had been owing by the estate of D. Lupton, jr., I would not have allowed a suit to have been brought against thee, even if I had had to advanced the money myself, but in the present case common justice forbids my paying the debt out of the funds of D. Lupton, jr.; as to the immediate payment of the money, I think I can safely repeat that the bank only wants to have the money satisfactorily secured. The directors judged it improper to delay bringing suit when there appeared no chance of payment otherwise, and more particularly as there was a number of suits against Daniel as one concerned in the Merchants' Bank, in addition to which the Union Bank has brought several suits against him. I have given as full and clear a view of the business relative to the suit, and the business of the estate of D. Lupton, jr., as I conveniently could by letter, confining myself to facts; and tho' it is very unpleasant to have to communicate them, I feel it a duty I owe to myself, to the widow of my deceased brother-in-law, and to John McPherson, an old and much respected friend and relative, to be thus plain in order to shew if the estate of D. Lupton, jr., deceased, is not settled up in the course of the ensuing spring, that it will not be my fault. I will apply to the board of directors at their next meeting and inform thee of the result of the application by mail, via Charlestown.

Respectfully thy friend,

P. JANNEY.

Alexandria, 12 *month* 30*th*, 1816.

DAVID LUPTON.

DEAR FATHER—Thinking it probable thee would hear of a suit being brought against John McPherson and Son, as endorsers of David Lupton, jr's. note for $1600, at the Bank of Potomac, I have thought the best way to give thee full information on the subject was to send thee a copy of my letter to John McPherson, which thou wilt herewith receive annexed.

I should prefer thy not letting Uncle John know, that thee has a copy of my letter to him, as he might not like it, and my object is to let thee know fully the state of the business; I much fear that after-all

the trouble I have had with the settlement of the estate, I shall incur the displeasure of Daniel and the family, by endeavoring to do what I think my duty.

Thine affectionately,
PHINEAS JANNEY.

The above letter is directed, to David Lupton, Applepy Ridge near Winchester, Virginia; is postmarked Alexandria, January 1, 1816.

EXHIBIT C. REFERRED TO IN N. LUPTON'S DEPOSITION.

1816.		
10 mo. 26.	Settlement with the Orphans' Court, Balance then remained in my hands, -	$761 46
1817.	Collected since then of old debts, - -	11 46
	And for sales due, - - - - -	157 00
3 mo. 1.	Rec'd. of Peter Saunders, for John McPherson's note, given to me on acc. of flour sold to them, - - -	1043 20
	Rec'd. of Laurason and Fowle on acc. of wharf, - - - - - -	5075 47
		$7048 59
1816.	Cash paid since settlement with O. C.	
11 mo. 2.	Bank Potomac, bal. D. Lupton's own account, being for money overdrawn, -	$27 13
12 mo. 28.	Paid Peter Saunders, - - - - -	308 51
1817.		
3 mo. 11.	Paid Peter Saunders in full of balance, -	3686 92
	Paid R. M. Scott, (4th inst.) to release mortgage on wharf. - - - -	2447 50
		$6470 06
	Balance,	$578 53

Remaining according to the above statement, wherein no charges have yet been brought.

Balance due bank of Alexandria, after applying the whole of the amount of the sale of the mill property, will amount to about $7250 00

To be paid with

Balance due from L. and Fowle, - - -	4924 53
Ditto from John McPherson and Son, Bal. on flour sold them after deducting money rec'd. for the note as other side, - - -	3377 19
11 1-4 tons plaster due from John McPherson and Son, at $20 per ton, am't. of appraisement -	225 00
John McPherson and Son, book acc. - - -	140 00
Samuel McPherson, - - - - - -	80 90

John McPherson and Son's note assigned to the estate of D. L., jr., by Abijah Janney & Co. -	$263 56
Due from Thomas Neill, assigned, - - -	223 00
Due from Abijah Janney, balance on his note, about the sum of - - - - - -	500
$400 also due from Jno. McPherson, or third part of property on Kg. street, on which D. Lupton paid $400, - - - - -	$9734 18

DEFENDANT'S DEPOSITIONS.

Notice :—To Thomson F. Mason, Esq., attorney for Ann Lupton. You will take notice that on Saturday the 2d day of June next, at my office in Alexandria, I shall take the depositions of Alexander Moore and Abijah Janney, to be read in evidence in a suit depending before the Circuit Court of the district of Columbia, at Alexandria, in which you are plaintiff: and Phineas Janney, executor of David Lupton, is defendant. The said depositions will be taken between the hours of 9 o'clock A. M. and 2 o'clock P. M.

R. J. TAYLOR, Att'y, of P. J.

May 28th, 1838.

ALEXANDRIA COUNTY, *ss :*

This day Robert J. Taylor, made oath before me, a justice of the peace of the county aforesaid, that on Monday the 28th day of May last, he delivered a true copy of this notice to Thomson F. Mason.

Given under my hand and seal, this 2d day of June, 1838.

ALEXANDER WAUGH.

DISTRICT OF COLUMBIA, to wit :

(L. S.) The United States of America, to Alexander Waugh, Charles Scott and George Wise,

Gentlemen, Greeting :—Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining Alexander Moore and Abijah Janney, in behalf of David Lupton's executor; in a suit depending in our Circuit Court of the District of Columbia, for the county of Alexandria, between Ann Lupton and David Lupton's executors, we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you or any two or more of you, that you call or cause to come, and diligently examine on the Holy Evangelist of Almighty God, touching the matter in controversy, between the aforesaid parties; and when you have examined them, and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ. Witness William Cranch, Esq. Chief Judge of the said court, this 18th day of May, in the year of our Lord, 1838.

EDM. J. LEE, *C. C.*

A. MOORES'S DEPOSITION.

In the case of ANN LUPTON
against
D. LUPTON, jun.'s Executor.

Interrogations by the defendant to be exhibited to Alexander Moore.

1st. Were you a notary public residing in Alexandria in 1815, and have since continued to be a notary public, residing in said town?

2d. Were you acquainted with John McPherson and Dan'l McPherson, merchants and copartners, formerly trading at Alexandria, under the firm of John McPherson & Son?

3d. Did the said firm stop payment, and if so, at what time; and was it understood generally that they had failed for a large amount?

4th. From your knowledge of the pecuniary affairs of said firm, do you suppose that a debt of $3000, which became due on the 20th Oct. 1815, could have been recovered by suit?

5th. Did the said firm ever resume payment, or carry on any mercantile business?

R. I. TAYLOR.

1st. To the first interrogatory I answer in the affirmative.

2d. To the second I answer in the affirmative.

3d. To the third I answer, that from the records of my office the said firm stopped payment on the seventh day of June, 1816. It was understood generally that they had failed for a large amount.

4th. To the fourth I answer, from my knowledge of the pecuniary affairs of said firm, the said debt could not have been recovered by suit.

5. To the fifth I answer in the negative.

A. MOORE.

DEPOSITION OF A. JANNEY.

Interrogations by the defendant to Abijah Janney.

1. Were you one of the firm of Abijah Janney & Co., formerly carrying on mercantile business at Alexandria?

2. Who were the other members of said firm?

3. Were John McPherson & Son indebted to the said firm at its dissolution, and how was that debt disposed of?

4. Was any note for that debt, or for any part of it, transferred to the defendant, Phineas Janney, as administrator of David Lupton, jun., and if so, at what time; and was any note for that debt, or any part of it, retained by you?

5. Was said firm of John McPherson & Son insolvent when the the said transfer was made, and did they ever after continue to be so?

6. Did you obtain payment of any part of the debt, due from the said firm of John McPherson & Son, to Abijah Janney & Co.?

7. Was Thomas Neale indebted to the said firm of Abijah Janney & Co.; and how was his debt disposed of—was any part of it transfered to the defendant, and if so, about what time?

8. If such transfer was made, was Thomas Neale at that time insolvent, and has he since continued to be so—and have you made any collection from him?

9. Have John McPherson, Daniel McPherson, and Peter Saunders departed this life?

10. Did you yourself fail in trade, and if so at what time, and have you since continued to be unable to pay your debts?

11. Did you yourself owe David Lupton, jun., a note or book account or both, if so, did you pay the executor of David Lupton, jun., the whole, or any part of said debts, and how was the payment made?

The depositions of Abijah Janney taken at the office of R. I. Taylor, in the suit of Ann Lupton complainant, against Phineas Janney executor of David Lupton, jun.

The said deponent being first solemnly affirmed deposes and says.

In answer to the first interrogatory, he answers in the affirmative.

To the second. That David Lupton, jun., the defendant's testator and Peter Saunders, were the other co-partners.

To the third. That John McPherson and Son, were indebted to the said firm of Abijah Janney & Co., at its dissolution; that the amount was divided into three parts, and three notes taken, payable to Abijah Janney & Co. (as this deponent believes,) for $263 56 each one of which was transferred to the defendant, as executor of David Lupton, jun., and is the note by him now produced, and hereto annexed, one he presumes was retained by the said Saunders, and the other is yet in this deponent's hands, unpaid; deponent cannot say when these transfers were made.

The fourth. That this interogatory is answered in the answer last given.

The fifth. This deponent believes they were insolvent when the said notes were given; he has never obtained payment of the note held by him.

To the sixth. This interrogatory, this deponent has already answered.

To the seventh and eighth. To these two interrogations this respondent is unable to answer, further than to say, that Thomas Neale was insolvent when he left Alexandria, which was not later than the beginning of the year 1817; that he believes he was insolvent some time before; that he removed from Virginia, to which he first went, to the State of Ohio, where, this deponent heard, he has been imprisoned for debt; for several years last past, he has been, as this deponent has been informed living in Ohio, in comfortable circumstances, but deponent cannot say how long this has been the case.

To the ninth. Deponent answers in the affirmative.

To the tenth. That this deponent did fail in trade about the year 1816, and has since been unable to pay his debts, with the exception of some small ones, as he could spare the money from his income, from his office as inspector of flour.

To the eleventh. That he was indebted to David Lupton, jun. by note dated 3mo. 16th, 1814, in the sum of $1077 97, and may have been indebted to him by open account, but of the latter he has no particular recollection; that on the 10 mo. 19th, 1816, he paid on the note $687 49 and may, though he does not recollect, have paid the open account; that the money he paid was raised by a discount on the deponent's note endorsed by the defendant P. Janny, and discounted at the Bank of Potomac, that he gave the said Phineas as an indemnity against his endorsement, a deed of trust on deponent's interest (being one third) in the Triadelphia mills; that the said defendant has since been compelled to pay the said note, which was for $6000; that deponent's interest in the said mills has since been sold, and produced about $1700, and that the balance of the money advanced by the said Phineas Janney, the defendant for this deponent, remains yet wholly unpaid.

ABIJAH JANNEY.

We the subscribers, justices of the peace of the county of Alexandria, do hereby certify, that the foregoing depositions of Alexander Moore and Abijah Janney, were taken before us on Saturday the 2d day of June, 1838, at the office of Robert I. Taylor, between the hours of 9 o'clock A. M., and 2 o'clock P. M., under the commission and notice annexed.

Given under our hands this 2d day of June, 1838.

ALEXANDER WAUGH,
CHARLES SCOTT.

AFFIDAVIT OF EDWARD C. FLETCHER.

ALEXANDRIA COUNTY, *ss.*

Edward C. Fletcher, makes oath before me a justice of the peace, of the county aforesaid, that he is now book keeper of the Bank of Potomac, that he has examined the books of the said bank at the request of Phineas Janney, and he finds that on the 12th of November, 1814, a note for $1600, drawn by David Lupton, jun., in favor of John McPherson and Son, dated that day, and endorsed by the said McPherson and Son, payable 60 days after date, was offered for discount by the said Lupton, jun., for his use. That the said note was discounted, and the nett amount $1582 93, was placed to the credit of the said Lupton, jun.

Given under my hand, this 9th May, 1838.

JON'A. SHILLABER.

ALEXANDRIA, 11 mo. 12, 1814.

$1600.

Sixty days after date, I promise to pay John McPherson and Son or order, sixteen hundred dollars, value received.

DAVID LUPTON, JUN.

Cr. The drawer.

J. McP. and Son.

Endorsements on back of the above note.

	$1600 00
Int. from 11th Jan. 1815, till 29th Sept. 1817, - -	260 80
	1860 80
Cr. D. McPherson's bond, - - - - - -	1000 00
	860 80
Int. from 29th Sept. 1817, to 4th Oct. 1817, - - -	71
	861 51
Costs of protest, - - - - - - - - -	1 70
	863 21

Rec'd, Oct. 4th, 1817, from Mr. Jno. McPherson, the above sum of eight hundred and sixty three dollars 21 cents, in full of the balance of this note as above stated.

JNO. BAKER, Att'y. for
Bank Potomac.

On demand, I promise to pay A. Janney & Co. or order, two hundred sixty three dollars, fifty six cents, value received, with interest till paid.

JNO. McPHERSON & SON.

Alex. 11 mo. 20, 1816.

Pay the within to the executors of D. Lupton, jun.'s, estate, it being his proportion of debt due by you.

A. JANNEY & CO.

AUTHORITY TO EXECUTORS TO SELL AT PRIVATE SALE.

I hereby authorize the executors of my late husband, David Lupton, jun. deceased, to make sale of the personal and real estate, either at public or private sale, as they may deem most advantageous, agreeably to his wishes expressed in his last will and testament, wherein they are authorized to sell, but does not particularly mention whether at public or private sale. Given under my hand and seal this fifth day of the third month, one thousand eight hundred and fifteen.

ANN LUPTON, (L. S.)

I, Alexander Moore, register of wills for Alexandria county, district of Columbia, do hereby certify that the above paper is a true copy of the original, recorded in my office at the instance of Phineas Janney, executor of David Lupton, jun., on the 16th day of November, 1820,

and appended to a statement of the estate of said Lupton, rendered to the Orphans' Court, on that day, by the executor.

(L. S.) Given under my hand and official seal, this second day of January, 1839.

A. MOORE.
Register Wills, Alexandria County.

Know all men by these presents, That we, Ann Lupton and Promice McCormack, are held and firmly bound unto Phineas Janney, executor of David Lupton, jun., deceased, in the full and just sum of two hundred dollars, to the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 15th day of December 1838.

Whereas the United States Circuit Court of the District of Columbia, continued and held for the county of Alexandria, the first day of November, 1838, in the case of Ann Lupton complainant, against Phineas Janney, executor of David Lupton, deceased, defendant, it was by the said court decreed and ordered, that the complainant's bill be dismissed with costs, from which decree the complainant prayed and obtained an appeal to the Supreme Court of the United States, to be holden at the city of Washington, the present seat of the national government. Now, the condition of the above obligation is such, that if the said Ann Lupton, complainant as aforesaid, her executors and administrators, shall prosecute the said appeal, and pay all costs and charges that may be awarded against her, in case she shall fail therein, then the above obligation shall be void, else to remain in full force and virtue.

Sealed and delivered in presence of } ANN LUPTON, (L. S.)
P. McCORMICK, (L. S.)

Approved,

W. CRANCH.

DISTRICT OF COLUMBIA, to wit:

Alexandria County.

I, Edmund J. Lee, clerk of the United States' Circuit Court of the District of Columbia, for the county of Alexandria, do hereby certify, that the foregoing is a true record of the proceedings in a certain suit in Chancery lately depending in said Court, in which Ann Lupton is complainant, and Phineas Janney, acting executor of David Lupton, jun., is defendant, with all things relating to the same, as fully as they exist among the records of my office.

In witness whereof, I hereto subscribe my name, and affix the seal of said Court, this 3d day of January, 1839.

EDM. J. LEE, *C. C.*